

**DE 82-16--July 8, 1982**

**CAMPAIGN CONTRIBUTIONS s. 106.08, F.S. (1981)**

*To: Mrs. Charlene Miller Carres, Attorney-at-Law, 356 Alhambra Circle, Coral Gables, Florida 33134*

*Prepared By: Division of Elections*

This responds to your request for an opinion on essentially the following questions:

1. Are contributions made by a house subject to the \$1,000 contributions limitation in section 106.08(1), Florida statutes (1981).
2. Whether checks drawn by a candidate on a joint account are generally considered contributions by the candidate to his or her own campaigns
3. Whether checks drawn by a candidate on a joint checking account which consists mainly of deposits made by the candidate's spouse consider contributions by the candidate to his or her own campaign?
4. Are checks drawn by a candidate on a joint checking account to which the candidate's spouse has recently made sizeable deposits (in excess of \$1000 over the average balance) considered contributions by the candidate to his or her own campaign.

You indicated that you are desirous of seeking a legislative seat and wish to establish your campaign fund from a joint checking account with your spouse. You expressed intentions to draw checks on the account to make contributions and/or loans to your campaign. You further indicated that virtually all of the money in the account has been deposited by your husband and until it was deposited in the joint account, consisted of income, profits, or dividends payable solely to him. Thus, your questions regarding use of a joint account.

Section 106.08(1), F.S., states in general; "No person or political commits shall make contributions to any candidate or political committee in this state, for any election, in excess of the following amounts . . . (b) To a candidate for legislative or multicounty office, \$1,000." (Emphasis supplied). It is further provided in s. 106.011(8), F.S., that "person" means an "individual or a corporation, association, firm . . . or other combination of individuals having collective capacity." (e.s.) Accordingly, an individual is allowed to contribute up to \$1,000 per election to any candidate for a legislative or multicounty office.

Therefore, I am of the opinion that under the provisions of s. 106.08, F.S., your spouse is an individual who is entitled to make contributions in his own name in the me

manner and under the some limitations as any other person. It is suggested that your spouse's contributions should be clearly identified on the negotiable instrument given to your campaign to distinguish them from any contributions or loans that you wish to make.

Your first question is answered accordingly.

Regarding your second question, s. 106.08(1), F.S., states:

“The contribution limits provided in paragraphs (a) through (i) shall not apply to contributions made by a state or county executive committee or to amounts contributed by a candidate to his own campaign.” (e.s.)

The peculiar features of a joint account make it difficult, if not impossible, in most cases, to determine what portion of the account belongs to each depositor; this is especially true where the parties are husband and wife with the possibility of a tenancy by the entirety. The intention of the parties is the controlling factor in determining the ownership or funds in a joint account; the instrument used in creating or establishing the account is also a major consideration.

A joint account is defined in Webster's Third New International Dictionary (unabridged), 1966 as:

“(A) bank or brokerage account owned jointly by two or more persons either of whom may withdraw funds or effect transactions on his signature above.”

The prevailing view seems to be that joint accounts are presumed to be vested in the names as given in the deposit as equal contributors and owners in the absence of evidence to the contrary. 10 Am. Jur. 2d Banks, s. 374. The intention of the parties is the controlling factor, and where a controversy arises as to the ownership thereof evidence is admissible to show the true situation. *Park Enterprises Inc., v. Trach*, 233 Minn. 467, 47 NW 2d 194 (Minn 1951). It has been held in the absence of proof as to the amount contributed by either of two depositors in a joint account it is presumed that they were equal contributors and owners of the funds in such account. *Susser v. Snyder*, 307 Michigan 30, 11 NW 2d 314 (Mich. 1943); *Fecteau v. Cleveland Trust Co.*, 171 Ohio St. 121, 12 Ohio Ops. 2d 139, 167 NE 2d 890 (Ohio, 1960)

It is the long standing policy of this Division that funds in joint accounts are the property of both depositors and that candidates using such accounts must specifically identify funds expended as contributions or loans from these accounts. Thus, candidates have been given the full use of funds deposited in joint accounts regardless of the depositor.

Because of the various bank agreements used in establishing joint accounts, we cannot determine the specific legal relationship of you and your spouse regarding ownership of the funds in your joint account. The agreement together with the intent of

the parties could create a tenancy by the entirety that is not under consideration here. Since the intent of the parties is controlling and until this area is legislatively or judicially clarified, I am of the opinion that contributions or loans may be made by a candidate from a joint account provided that the negotiable instrument used in transacting such funds clearly and specifically identify or earmark such funds. Loans or contributions made from a joint account must be reported as required by s. 106.07, F.S.

Based on the above discussion, you may use funds from a joint account with your husband as a contribution or loan to your campaign as long as the attribution is indicated and the check or accompanying documents is signed by you.

From my discussion of question two, questions three and four are accordingly answered.